

Massachusetts Department of Public Health Confidentiality Policy

Introduction

To further its mission, the Massachusetts Department of Public Health (the “Department”) collects confidential information for use in public health surveillance, program development and evaluation, research, and for many other public health purposes. The Department also collects information from individuals seeking certain health care services or benefits. It is critical that Department workforce members who carry out these core functions recognize the importance of protecting personal privacy and safeguarding the confidentiality of information obtained by the Department to the greatest extent possible.

Each citizen of the Commonwealth has a fundamental right to privacy and confidentiality in his/her relationship with health care professionals and other entities that collect, use, or maintain confidential information. Individuals have rights related to how information about them is collected, used, maintained, and disclosed. Individually identifiable information must be treated confidentially, and individuals should be given easily understood information about policies regarding the collection, use, maintenance, and disclosure of confidential information. The authorization of individuals should be obtained for anticipated uses or disclosures of individually identifiable information, unless providing the data without needing authorization is required or allowed by law or regulation.

Individuals’ claims to privacy need to be balanced by their public responsibility to contribute to the common good, through use of their information for important, socially useful purposes, with the understanding that their information will be used with respect and care and will be legally protected. For instance, health information is vital to public health surveillance, public health investigations, collection of vital records, and research studies about the population’s health. Health information is essential to the Department’s performance of basic public health activities, and the protection of confidential information about individuals is an important responsibility of the Department. Thus, the Department strives to balance its mission to protect the health and safety of the public with its commitment to safeguarding the privacy rights of its citizens.

This Policy is intended to ensure that Department workforce members comply with all relevant state and federal laws and regulations concerning the protection of confidential information. These include, but are not limited to, the Health Insurance Portability and Accountability Act (HIPAA) and the privacy and security regulations implementing HIPAA, as they apply to the Department as a hybrid agency¹; the

¹ Hybrid Entity means DPH as a single legal entity, whose business activities include both covered and non-covered functions and that designates the covered functions to be included in its covered components. Only covered components are required to comply with HIPAA’s privacy and security regulations. All covered and non-covered components must follow the Department’s Confidentiality Policy and Procedures, except where otherwise indicated.

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Massachusetts Fair Information Practices Act (FIPA); and Massachusetts Executive Order #412. Other specific state and federal laws and regulations may impose additional confidentiality requirements. Examples include state laws regarding HIV/AIDS information and federal laws regarding confidentiality of substance abuse information.

This Policy establishes the general rules and guidelines that all Department workforce members are expected to follow concerning use and disclosure of confidential information collected and maintained by the Department. The specific procedures that must be implemented by each Department Bureau are contained in the Confidentiality Procedures.

To this end, the Department adopts this Confidentiality Policy. It applies to all Department workforce members included in the covered and non-covered components of the Department.

Limiting Collection of Confidential Information

Department workforce members shall collect confidential information only when such collection is authorized by law or regulation, when confidential information is deemed necessary to further a public health purpose, or when provided to the Department by individuals seeking health services or benefits. Department workforce members shall collect no more confidential information than is necessary for the stated purpose.

Limiting Use of Confidential Information

Department workforce members shall limit the use of confidential information to those purposes for which the information was collected or other public health purposes permitted by law, which further the mission of the Department. Whenever identifiable information is not necessary to conduct the public health purpose, the confidential information shall be rendered de-identified.

Limiting Access to Confidential Information

Department workforce members shall limit access to confidential information to only those workforce members who have a legitimate need to access the information in order to conduct the public health purpose. Access shall be limited to the minimum number of individuals who are reasonably necessary to conduct the public health purpose.

Limiting Disclosure of Confidential Information

Department workforce members shall limit disclosure of confidential information to only authorized persons. Department workforce members shall follow the Confidentiality Procedures, which delineate when and to whom disclosures can be made. Department workforce members shall limit disclosure of confidential information to the minimum

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necessary amount of confidential information that is required to accomplish the intended purpose of the use or disclosure.

Agreement to Maintain Confidentiality of Confidential Information

All Department workforce members shall strictly maintain the confidentiality of all confidential information held by the Department. No person having access to confidential information shall disclose, in any manner, any confidential information except as established in the Confidentiality Procedures. All Department workforce members will receive education and training regarding the confidentiality and security principles addressed in this Policy and the Procedures developed and implemented under this Policy. In addition, all Department workforce members shall agree to abide by the Confidentiality Policy and to follow all applicable Confidentiality Procedures. Department workforce members shall agree to maintain the confidentiality of confidential information even after termination of employment or other contractual obligations.

Data Linkage

If confidential information is used for data linkage, the linked dataset shall be stripped of personal identifiers and all identifiers shall be destroyed unless there is a legitimate public health purpose for retaining such identifiers. When such projects involve individuals who are not Department workforce members, Department workforce members shall conduct data linkage projects in-house whenever possible and disclose only the linked dataset without personal identifiers, other than a unique identification number, unless otherwise approved by the Commissioner.

Data Destruction

As soon as reasonably practicable and in a manner consistent with Commonwealth record retention policies, Department staff shall de-identify confidential information and destroy all identifiable information unless there is a legitimate public health purpose for retaining such identifiable information or retention of the information is required by law.

Publications and Reports Based on Confidential Information

All reports and publications based on confidential information shall contain only aggregate data. No personally identifiable information or information that could lead to the identification of an individual shall be published or disclosed. All aggregate data presented in such reports or publications shall comply with Department procedures on aggregate data release to ensure that individuals cannot be identified based on the data presented. No maps based on confidential information may be published or disclosed with sufficient detail so as to allow for identification of individuals.

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Individual Rights

The Department is committed to providing individual data subjects with access to confidential information held by the Department, unless otherwise restricted. The Department shall take appropriate measures to permit individual data subjects to amend or to restrict the disclosure of their confidential information subject to certain restrictions. An opportunity to request specific individual rights related to confidential information held by the Department shall be afforded to all data subjects. All workforce members shall follow procedures that provide for these rights.

Security

Department workforce that have access to confidential information shall ensure that such information is maintained in a secure manner which prevents unauthorized individuals from gaining access to such information. Workforce members shall follow all applicable procedures to ensure physical and electronic security of all confidential information. Department workforce members shall not attempt to exceed the scope of their authorized access or attempt to circumvent any Department systems security measures.

Data Integrity

The Department will work to ensure the quality, accuracy, and reliability of the data and records under its control, whether contained in written, electronic, or other format. The Department will only collect confidential information that is relevant to the purposes for which it is to be used, and will work to ensure that such data is accurate, complete, and timely. Department workforce members must ensure that confidential information is protected from unauthorized modification and destruction. The Department shall strive to maintain the accuracy of the confidential information held including, establishing where appropriate, mechanisms allowing individuals to have the opportunity to review and amend their confidential information in defined and secure circumstances, in compliance with state and federal law.

Non-Compliance

All Department workforce members are required to comply with this Policy and the Confidentiality Procedures. Department workforce members that fail to comply with this Policy and the Procedures may be denied further access to confidential information and may be subject to disciplinary action. Department workforce members shall immediately report to the Privacy Office any violations of this Policy. Department workforce members are protected from retaliation for reporting violations of this Policy or the Confidentiality Procedures by Massachusetts law (M.G.L. c. 149, §185). The Department may audit use and disclosure of confidential information by Department workforce members in order to ensure compliance with this Policy and the Confidentiality Procedures.

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Research Studies and Contact with Data Subjects

Department workforce members that are conducting a research project, which requires access to confidential information held by the Department, shall consult with the Office of the General Counsel to ensure that appropriate research protocols are followed and that review by the Human Research Review Committee (HRRC) at Shattuck Hospital (i.e., the Department's Institutional Review Board) is obtained when necessary. In addition, Department workforce members that are conducting a research study or other public health investigation, which involves contact with data subjects, shall consult with the Office of the General Counsel to review and approve the contact protocol (consent forms, questionnaires, interview scripts, etc.).

Confidential Information Procedures

Each Department Bureau shall implement the specific procedures adopted pursuant to this Policy. A Department Bureau may adopt additional procedures that specifically address the operations of the Bureau provided that the procedures are consistent with this Policy and are reviewed and approved by the Privacy Office. Department workforce members shall comply with all procedures adopted pursuant to this Policy.

Compulsory Legal Process and Requests from Law Enforcement

Any Department workforce member receiving a subpoena, discovery request, court order or any other form of compulsory legal process to provide confidential information shall immediately notify the Office of the General Counsel and shall not disclose any confidential information unless and until authorized to do so by the Office of the General Counsel. Any workforce member receiving a request for access to confidential information from a law enforcement official shall immediately notify the Office of the General Counsel or the Privacy Office and shall not disclose any confidential information unless and until authorized to disclose the information.

CONTACT INFORMATION

Any questions concerning this Policy should be directed to the Privacy Office, in writing at Privacy Office, Department of Public Health, 250 Washington Street, Boston, MA 02108, or by telephone at 617-624-6083.

Date: April 14, 2003